



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/428,508	10/27/99	CALLINAN	G 1423-9

PM82/0110
LAFF WHITESEL CONTE & SARET LTD
401 NORTH MICHIGAN AVENUE
CHICAGO IL 60611

EXAMINER

LAGMAN, F

ART UNIT PAPER NUMBER

3673

DATE MAILED: 01/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/428,508

Applicant(s)
Callinan et al

Examiner
Frederick L. Lagman

Group Art Unit
3673



- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-47 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-22, 24-32, 34-42, and 44-46 is/are rejected.
- ☒ Claim(s) 23, 33, 43, and 47 is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The drawing(s) filed on Oct 27, 2000 is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☒ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 1
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3673

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on applications filed in Australia on 4/28/97, 7/3/97, and 10/21/97. It is noted, however, that applicant has not filed certified copies of the Australian applications as required by 35 U.S.C. 119(b).

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
3. The drawings are objected to because cross-sectional views must be denoted by Arabic or Roman numerals, see Figure 3. Cross-section A-A should be denoted as 4-4 or IV-IV.
Correction is required.

Specification

4. The disclosure is objected to because of the following informalities: page 6, line 33, the use of "C" after the angles is incorrect, since the use of "C" refers to temperature ie. Celsius or centigrade.

Appropriate correction is required.

Art Unit: 3673

Claim Objections

5. Claim 2 is objected to because of the following informalities: line 3, the use of “C” after the angles is incorrect, since the use of “C” refers to temperature ie. Celsius or centigrade.

Appropriate correction is required.

6. Claim 23 is objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 5, 6, 7-10, 11-14, 15-22, 24, 32-35, 36-38, 39, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 5, 6, 7, 11, 15, 17, 32, 36, and 43, the use of improper alternative language such as “and/or” renders the claims indefinite.

As to claim 39, line 1, the recitation of “as claimed in claim 39” is incorrect, thus indefinite because a claim cannot depend from itself.

Art Unit: 3673

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3/1, 4, 5, 6, 7, 15, 16, 17, 21, 22, 24, 25, 29, 30, 31, 32, 34, 40, 41, 42, 44, 45, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by German reference #8513539 to Bock.

As to claims 1, 3/1, 4, 5, 6, and 7, Bock discloses a retaining wall for retaining an embankment comprising a plurality of tires (see figures 4-6) wherein the tires are arranged in a plurality of courses and the central axis of each tire is offset from vertical and wherein the adjacent courses abut. The courses of tires is also shown having fill material which may be granular or particulate material such as sand. The tire may have the sidewall removed and the uncut sidewall appears to face downwards. Bock inherently discloses the method of forming the retaining wall as broadly recited in claims 25, 29, 30, 31, 32 and 34.

Insofar as understood claims 15, 16, 17, 21, 22, and 24 are met by Bock. Bock discloses a retaining wall (see figure 4) having a reinforcing section is provide for each course and is formed from portions/sections cut from one or more tires wherein the reinforcing section is formed by joining together a plurality of tire tread sections or a plurality of tire sidewall sections.

Art Unit: 3673

Furthermore, Bock inherently discloses the method of forming the retaining wall as broadly recited in claims 40, 41, 42, 44, 45, and 46.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 3/2, 26, 27, 28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference #8513539 to Bock.

As to claims 2, 3/2, 26, 27, and 28, Bock discloses a retaining wall wherein it appears the tires are offset from the vertical at a range between 10 to 20 degrees. Furthermore, it would have been obvious to offset the tires at an angle between 10 to 20 degrees should the hill to be stabilized is sloped ie. if the tires was at a slope of a hill, then it would inherently be angled.

As to claim 35, Bock discloses all that is claimed except for a liner. It would have been an obvious matter of design choice to provide a liner, since doing so is old and well known in the art for facilitating the stabilization of the ground.

Art Unit: 3673

Allowable Subject Matter

13. Claims 33 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 8, 9, 10, 18, 19, 20, 37, 36/37/38, and 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

15. Claims 11, 12, 13, and 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3673

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is (703) 305-7456.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Bagnell, can be reached at (703) 308-2151. The fax phone number for this Group is (703) 305-7687.


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

FLL 

January 2, 2001